Supreme Court, U.S.
FILED
SEP 29 1993
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No. 93-245

In The

Supreme Court of the United States

October Term, 1993

JAMES WILLIAM RINIER AND CARMELLA FORZIATI,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF FOR PETITIONERS

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RESPONSE

Further review by this Court is warranted as demonstrated by the Respondent's Brief for the United States in Opposition.

Respondent contends that, "Married taxpayers have an *unrestricted* option to file separate returns. . ." (Resp. 2, footnote 2, emphasis added) and that "Married persons have an *absolute* right to file separate returns under the Internal Revenue Code." (Resp. 5, emphasis added). Respondent has failed to recognize the many restrictions which are in place for married couples who file separate returns. For example, married couples who file separately are *restricted* from claiming the following benefits:

1. Credit for Expenses for Household and Dependent Care Services Necessary for Gainful Employment per 26 U.S.C. § 21(e)(2).
2. Credit for the Elderly and the Permanently and Totally Disabled per 26 U.S.C. § 22(e)(1).
3. Earned Income Credit per 26 U.S.C. § 32 (d).
4. Standard Deduction if one spouse itemizes deductions per 26 U.S.C. § 63(c)(6).

Respondent further contends that , "It is *only* when both spouses earn enough to be in the same, *higher tax bracket* that they may pay more taxes when married than single." (Resp. 3, emphasis added). However, according to a far more recent law review article than the 1975 article that the Respondent referenced, "The actual pattern of effects has strong class dimensions. Among our poorest citizens, we

have disincentives for marrying, or staying together. For the broad middle class, there is something of an all-or-nothing effect, pushing against part-time labor options for either spouse. The upper classes suffer a distinct bias towards specialized households. When these various effects are put together, there are unnerving discontinuities across the income classes, and potentially profound dynamic effects." See Edward J. McCaffery, "Taxation and the Family: A Fresh Look at Behavioral Gender Biases in the Code," 40 *UCLA Law Review* 983, 1059 (1993). Respondent should refer to the more recent law review articles concerning this matter as listed by Petitioner as well as Boris I. Bittker, "Federal Income Taxation and the Family," 27 *Stanford Law Review* 1389 (1975).

Regarding *Hoeper v. Tax Commission of Wisconsin*, 284 U.S 206 and *Boyter v. Commissioner*, 668 F.2d 1382 (4th Cir. 1981) and the issue of attribution or aggregation of income, "[t]he most common complaints made in the tax policy and economic literature regarding the biases of the income tax against women concern the system of *aggregated* spousal rate, or 'joint filing.' The system has given rise to the 'marriage penalty'. . . Essentially, husbands and wives now face a single rate schedule. (It is possible for a given married couple to file separately, but the rate schedules are designed to give this option no benefit)." (emphasis added) See page 989, Edward J. McCaffery, "Taxation and the Family: A Fresh Look at Behavioral Gender Biases in the Code," supra. Thus a married taxpayer's tax is computed with regard to the income of the other spouse via the exact 50% split of the progressive tax rate levels and the standard deduction for joint filers. While the income tax of one spouse may not

increase while the other income does, the two spouses of the marriage solely due to their marriage are taxed with reference to each other. How can it be considered that reference to the other spouse's income does not exist when it is the very existence of that income that creates the greater tax known as the marriage penalty or marriage tax penalty over what would have been paid if Petitioners were unmarried?

Regarding *Allegheny Pittsburgh Coal Co. v. County Com'n*, 448 U.S. 336 and Respondent citing at 343 (Resp. 6) from the opinion that "the seasonable attainment of a rough equality in tax treatment of similarly situated" individuals is required actually supports Petitioners' contentions. Since there are four seasons in a year and that the marriage tax penalty has been in existence for approximately twenty-two years, that equates to approximately eighty-eight seasons and still counting that equal protection has not been granted to married couples when both have income and pay the additional tax solely due to their marriage over those living together who have not undergone the formal wedding ceremony. Seasonable attainment has not been met.

Concerning Respondent's citing of *Pension Benefit Guaranty Corp. v. R. A. Gray Co.*, 467 U.S. 717, this Court also noted at 730 quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 16-17, "The retroactive aspects of legislation, as well as the prospective aspects, must meet the test of *due process*, and the justifications for the latter may not suffice for the former." (emphasis added)

CONCLUSION

Throughout the years many law review articles have been written concerning the existence and problem of the marriage tax penalty. This Court has the opportunity to define the limits of Congress and the President in exacting an additional income tax from married persons where both have income over what they would have paid if unmarried. From the passage of recent tax laws, the marriage tax penalty will continue to be imposed until this Court intervenes.

Respectfully submitted,

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Dated: September, 1993